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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/634,118

08/04/2003

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4847-04A

5751

4678 7590 08/06/2009
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EXAMINER

LUGO, CARLOS

ART UNIT

PAPER NUMBER

3673

MAIL DATE

DELIVERY MODE

08/06/2009

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEITH D. MILLER, CHRISTOPHER R. ROGERS, FARRELL
SMITH, and JEFFREY T. HUGHES

Appeal 2009-003881
Application 10/634,118
Technology Center 3600

Decided: August 6, 2009

Before DONALD E. ADAMS, ERIC GRIMES, and MELANIE L.
McCOLLUM, *Administrative Patent Judges*.

GRIMES, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a window latch. The Examiner has rejected claims 9-32 and 35-54, all of the pending claims, as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

Claims 9-32 and 35-54 are on appeal. Claim 9 is representative and reads as follows:

Claim 9: A window latch for a locking window, said window having a window frame including at least one window sash which is selectively movable between a first closed position and a second open position, said window latch comprising:

- (a) a cam latch selectively movable between a first open position and a second locked position to secure the window sash in said closed position;
- (b) a housing including an opening for said cam latch, a perimeter wall having opposing ends defining said opening on one side of said housing, and a pair of rigid interior support walls, each partially defining said opening and extending across said housing from one opposing end of said perimeter wall to said perimeter wall on an opposite side of the housing wherein said perimeter wall having an opening for said cam latch and said pair of rigid interior support walls extend downward to engage the surface of the window sash to provide support for said housing;
- (c) a pivot fastener for attaching said cam latch to said housing;
- (d) a bushing adapted for use with said pivot fastener; and
- (e) a detent for retaining said cam latch in one of said open and said locked positions, wherein said detent includes at least one protrusion on one of said housing and said cam latch and a receiving groove on the other of said housing and said cam latch, said receiving groove for receiving said protrusion, said protrusion and said groove being substantially parallel to the axis of said pivot fastener.

The claims stand rejected under 35 U.S.C. § 103(a) as follows:

- claims 9-14, 17-30, 35-40, and 43-54 in view of Mosch¹ and Diginosa;²
- claims 15, 16, 41, and 42 in view of Mosch, Diginosa, and Murphy;³ and

¹ Mosch, US 4,801,164, Jan. 31, 1989.

² Diginosa, US 6,135,510, Oct. 24, 2000.

- claims 31 and 32 in view of Mosch, Diginosa, and Repass.⁴

OBVIOUSNESS I

Issue

The Examiner has rejected claims 9-14, 17-30, 35-40, and 43-54 under 35 U.S.C. § 103(a) as being obvious in view of Mosch and Diginosa.

The Examiner finds that Mosch discloses a window latch comprising, among other things, “a bushing (35) adapted for use with the pivot fastener and a detent for retaining the cam latch in one of the open or locked positions. The detent includes at least one protrusion (67 and 68) on one of the housing and the bushing and a receiving groove (65 and 66) on the other of the housing and the bushing” (Ans. 3). The Examiner relies on Diginosa as disclosing supporting walls in a window latch component (*id.* at 4). The Examiner concludes that it would have been obvious to one having ordinary skill in the art to incorporate Diginosa’s support walls into Mosch’s device “in order to provide support to the housing structure” (*id.* at 4).

Appellants contend that the Examiner erred in finding that the cited references disclose or suggest a detent for retaining the cam latch in an open or closed position that includes a protrusion and a receiving groove on the housing and the cam latch, as required by claim 9 (*id.* at 9).

The issue with respect to this rejection is: Does the evidence of record support the Examiner’s conclusions that the cited references disclose or suggest a detent that includes a protrusion on one of the housing or the cam latch and a receiving groove on the other of the housing and the cam latch?

³ Murphy et al., US 6,568,723 B2, May 27, 2003.

⁴ Repass, US 1,948,542, Feb. 27, 1934.

Findings of Fact

1. Mosch discloses a window lock that locks “by rotation of a cam which coacts with a keeper” (Mosch, col. 1, ll. 55-59).

2. Figure 2 of Mosch is shown below:

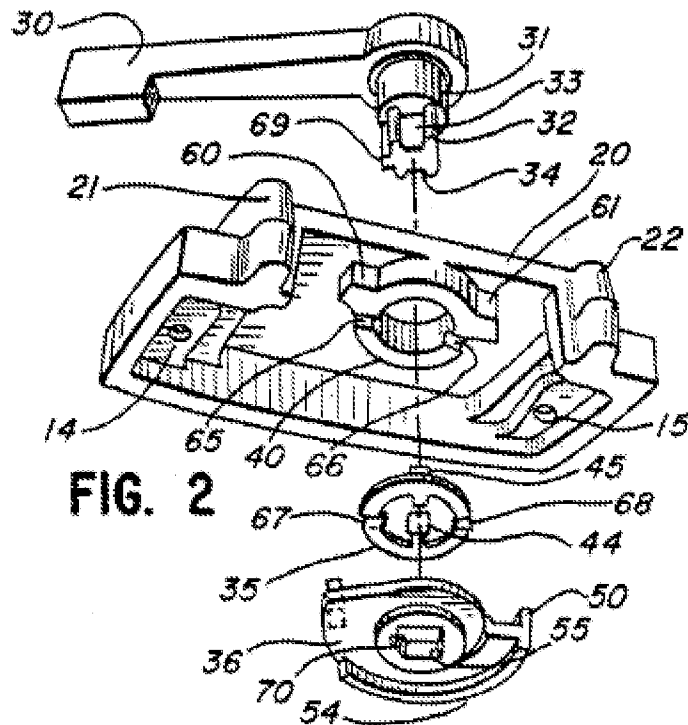


Figure 2 shows “a perspective exploded view of the check rail lock housing and associated structure” (*id.* at col. 3, ll. 6-7).

3. Mosch discloses that the

structure associated with the housing 10 ... includes a handle 30 having an integral shaft 31 with a rectangular section 32 at the lower end thereof Additional movable structure includes a spring washer 35 and a cam 36. ...

The shaft 31 is rotatably mounted within a tubular section 40 of the housing which depends from the top wall 20 with the rectangular section 32 of the shaft extending below the tubular

section 40. The spring washer 35 and the cam 36 are mounted on the rectangular section 32.

(*Id.* at col. 3, ll. 51-66.)

4. Mosch discloses that the

spring washer 35 is formed as an annular member to surround the rectangular section 32 of the shaft and has a pair of tabs 44 and 45 formed upwardly from the plane of the spring washer for rotational interlocking relation in the axially extending grooves 33 and 34 whereby the spring washer is caused to rotate with the shaft.

(*Id.* at col. 4, ll. 1-7.)

5. Mosch discloses that the

spring washer 35 and the tubular section 40 of the housing have coacting detent means for releasably holding the cam in either locked or unlocked position. This detent means includes a pair of diametrically opposite detent notches 65 and 66 formed in an exposed lower face of the tubular section 40 and a pair of diametrically opposite detents 67 and 68 deformed upwardly in the annular body of the spring washer and which engage in the detent notches 65 and 66 when the cam 36 is in either locked or unlocked position.

(*Id.* at col. 4, ll. 25-34.)

Principles of Law

“The test of obviousness *vel non* is statutory. It requires that one compare the claim’s ‘subject matter as a whole’ with the prior art ‘to which said subject matter pertains.’” *In re Ochiai*, 71 F.3d 1565, 1569 (Fed. Cir. 1995) (quoting 35 U.S.C. § 103). A proper analysis under § 103 requires “a searching comparison of the claimed invention – including all its limitations – with the teachings of the prior art.” *Id.* at 1572.

Analysis

Claim 9 is directed to window latch that comprises, among other things, a detent that includes a protrusion on one of the housing or the cam latch and a receiving groove on the other of the housing or the cam latch. Appellants contend that the cited references do not disclose or suggest the detent recited in claim 9.

The Examiner reasons that

Mosch discloses that the detent comprises a pair of protrusions (67 and 68) that engages respective grooves (65 and 66). Since the bushing 35 is attached to the pivot fastener 31,32 and to the cam 36, the protrusions are considered as on the cam latch. The claim language does not require that they have to be “directly” extending and/or “directly on” the housing and/or the cam latch.

(Answer 8.⁵)

Appellants’ arguments are persuasive. The Examiner has not adequately explained how the cited references disclose or suggest a detent that includes a cooperating protrusion/groove combination on the housing and the cam latch. The Examiner cites protrusions on the spring washer (bushing) of Mosch, and reasons that they correspond to the claimed protrusions because the spring washer cooperates with the cam latch. However, claim 9 requires a protrusion or cooperating groove on each of the housing and the cam latch. The spring washer (bushing) is a separate

⁵ The Examiner also asserts that “[e]ven if the applicant argues that the detent is ‘directly on’ one of the housing and the cam latch, Repass teaches that limitation (see rejection to the claims 31,32)” (Answer 8). Repass is not relied on in the instant rejection, however, so its teachings are not relevant to the issue of whether the apparatus of claim 9 would have been obvious in view of Mosch and Diginosa.

element from the housing and the cam latch; a protrusion that is on the bushing is not on the housing or cam latch. In accord with *Ochiai*, a conclusion of obviousness must take into account all of the claim limitations. Thus, the rejection of claim 9 as being obvious in view of Mosch and Diginosa is reversed.

Independent claim 29 also stands rejected as being obvious in view of Mosch and Diginosa. Claim 29, like claim 9, requires a window latch that includes a detent for retaining a cam latch in an open or locked position, where the “detent includes at least one protrusion on one of said housing and said cam latch and a receiving groove on the other of said housing and said cam latch.” Thus, the rejection of independent claim 29 is reversed for the reasons discussed above.

Claims 10-14, 17-28, 30, 35-40, and 43-54, which depend from one of claim 9 or 29, also stand rejected as being obvious in view of Mosch and Diginosa. The rejection is reversed for the reasons discussed above.

Conclusion of Law

The evidence of record does not support the Examiner’s conclusion that the cited references disclose or suggest a detent that includes a protrusion on one of the housing and the cam latch and a receiving groove on the other of the housing and the cam latch.

OBVIOUSNESS II

The Examiner has rejected claims 15, 16, 41, and 42 under 35 U.S.C. § 103(a) as being obvious in view of Mosch, Diginosa, and Murphy (Answer 6). Claims 15, 16, 41, and 42 depend from claim 9 or claim 29. As

discussed above, the Examiner has not adequately explained how the cited references would have suggested the limitations of claims 9 and 29. Thus, the rejection of claims 15, 16, 41, and 42 is reversed.

OBVIOUSNESS III

Issue

The Examiner has rejected claims 31 and 32 under 35 U.S.C. § 103(a) as being obvious in view of Mosch, Diginosa, and Repass. Like claims 9 and 29, claims 31 and 32 require that the detent “retain[s] said cam latch in one of said open and said locked positions.”

The Examiner relies on Mosch and Diginosa as discussed above. The Examiner finds that Repass teaches a window lock having “a detent that includes at least one protrusion (27) on one of the housing and the cam latch and a receiving groove (28) on the other of the housing and the cam latch” (Answer 7). The Examiner concludes that it “would have been obvious to one having ordinary skill in the art ... to provide the apparatus described by Mosch, as modified by Diginosa, with a detent that includes a protrusion/groove engagement between the housing and the cam latch, as taught by Repass, in order to position[] and/or hold the cam latch with respect to the housing” (*id.*).

Appellants contend that the Examiner erred in finding that the cited references teach the recited detent because the “stud and notch of Repass merely acts as a stop to prevent further movement of the cam latch; it does not retain the latch in the open or close[d] position” (Appeal Br. 11).

The issue with respect to this rejection is: Does the evidence of record support the Examiner’s conclusion that the cited references suggest a

detent, including a protrusion on one of the housing or the cam latch and a receiving groove on the other of the housing and the cam latch, that retains a cam latch in the open or closed position?

Additional Findings of Fact

6. Repass discloses a sash lock for locking a window in an open or closed position (Repass, ll. 1-6).

7. Figure 5 of Repass is shown below:

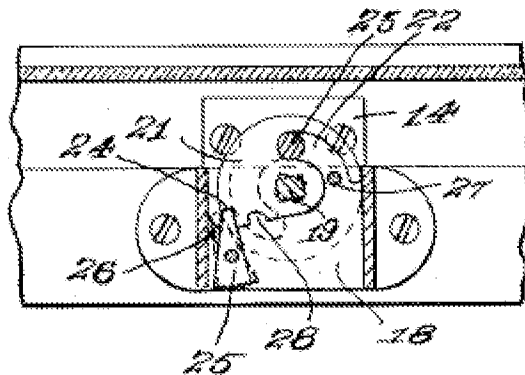


Figure 5 shows a cross-sectional view of Repass' lock (*id.* at l. 28).

8. Repass discloses that the lock includes locking plate 21 (*id.* at ll. 47-48), and that in the unlocked position, “the locking plate engages a stud 27 which is receivable within a notch 28 provided in the plate” (*id.* at ll. 71-74).

9. The Specification discloses that the “window latch includes ... a detent for retaining the cam latch in one of the open and the locked positions” (Spec. 5: 2-4).

10. The Specification discloses that “the detent 56 may be a protrusion 60 extending from the housing 22 that cooperates with a groove 68 defined by the cam wall 36 and collar 58 of the locking arm 30” (*id.* at 8: 19-21).

11. The Specification discloses that the “longer of the grooves 68 has a slightly enlarged diameter 64 at blind end. The presence of the enlarged diameter 64, which may resemble a barbell shaped region, reduces a diameter of the collar 58 creating a recess for seating one protrusion 60.” (*Id.* at 8: 26-29).

12. The Specification discloses that a user “experiences the sensations of the one protrusion 60 seating in the recess at the blind end created by the enlarged diameter 64. In addition to seeing, the sensation may include the feel and audible snap of the cam latch 16 fully engaging” (*id.* at 8: 31 to 9: 1).

Analysis

Claims 31 and 32 are directed to a locking window that comprises a window latch that includes, among other things, “a detent for retaining the cam latch in one of the open and the locked positions.” Appellants argue that Repass’ latch does not carry out the required function (Appeal Br. 11).

The Examiner finds that, “[a]s seen in attachment #3 [to the Answer], Repass and the current invention illustrates the same structure. Therefore, if the structure defined by the applicant is capable of ‘retain’ in one of the open or latch positions, then Repass device is also capable” (Answer 10).

Appellants’ arguments are persuasive. The Examiner provides a comparison of Figure 4B of the instant Specification with Figure 5 of Repass, with the respective grooves and protrusions indicated. The Examiner has not, however, adequately shown that Repass’ latch includes an enlarged structure at the end of its notch/groove that would have the effect of retaining the cam latch in a fully open or fully closed position. Nor has the

Examiner shown that Repass' latch includes another structure that would have the required effect. Therefore, in spite of the apparent similarity of the figures of Repass and the instant Specification, we agree with Appellants that the Examiner has not shown that the cited references would have suggested a product meeting all of the limitations of claims 31 and 32.

Conclusions of Law

The evidence of record does not support the Examiner's conclusion that the cited references suggest a detent, including a protrusion on one of the housing or the cam latch and a receiving groove on the other of the housing and the cam latch, that retains a cam latch in the open or closed position.

SUMMARY

We reverse the rejections under 35 U.S.C. § 103(a) of claims 9-32 and 35-54 based on the cited prior art.

REVERSED

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